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Supreme Court, U.S.
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**In The**
**SUPREME COURT of the UNITED STATES**

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MARGARET O'CONNOR,

Petitioner,

v.

PAMELA S. PREDICK, et vir., et al.

Respondents.

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# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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24 pp

## QUESTIONS PRESENTED

I. Whether a state circuit court's exercise of discretion in imposing a remedial sanction for contempt under a state contempt statute prohibiting the contemnor from entering the county until the time the contemnor has obtained adequate mental health treatment because the contemnor had repeatedly harassed and physically jeopardized innocent citizens in various locations for over a decade is a substantial federal issue or not.

II. Whether the Court should independently review a state circuit court's conclusions of law leading to a remedial contempt sanction of a serial stalker under state statutes as to whether the conclusions were supported by adequate findings of fact on the basis such a routine act of a state circuit court on the argument it might impinge on the substantial federal rights and significance to the general public.

III. Whether this Court should grant certiorari to search a state circuit court appellate court record for a possible federal right of association violation claimed by the civil contemnor Petitioner even though the federal issue was never squarely presented to the state courts.

## PARTIES TO THE PROCEEDING

Petitioner, Margaret O'Connor, was the Defendant in the circuit court remedial contempt sanction proceedings, Appellant in the Wisconsin Court of Appeals, and Petitioner in the Wisconsin Supreme Court.

Respondents, Pamela S. Predick and George Predick were harassment victim Plaintiffs in the circuit court proceedings, Respondents in the Wisconsin Court of Appeals, and Respondents in the Wisconsin Supreme Court case that summarily affirmed the Court of Appeals' affirmance of the circuit court's remedial contempt sanctions against Petitioner O'Connor.

Respondent, Tina M. Busch, was a harassment victim Plaintiff in the circuit court proceedings, a Respondent in the Wisconsin Court of Appeals, and a Respondent in the Wisconsin Supreme Court case that summarily affirmed the Court of Appeals' affirmance of the circuit court's remedial contempt sanctions against Petitioner O'Connor.

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## OPINIONS BELOW

On November 1, 2001, the Circuit Court for Walworth County, Wisconsin, the Honorable Robert J. Kennedy presiding, granted Respondents' motions asking that Petitioner be found in contempt for violating an April 23, 1999 Permanent Injunction and August 28, 2001 Order of the circuit court for, inter alia, stalking and harassing the Respondents and their counsel, and further, an additional contempt in court on November 1, 2001 in the circuit court's presence by repeatedly interrupting the Court during its findings of contempt and making various inappropriate remarks about the circuit court's statements. Included in the sanctions was a statutorily required purge condition in relation to 90 days jail purge condition in an August 28, 2001 Order in relation to the acts of contempt and to allow the defendant to purge such violation by remaining outside of Walworth County permanently. On December 26, 2001 at a hearing to consider Defendant's motion to modify purge conditions, the Court ordered the motion to modify the purge conditions was denied but, inter alia, stated that the Court would reconsider the Defendant's motion if the Defendant participated in substantial professional counseling/therapy and provide the Court and parties with a written report from Defendant's counselor/therapist that the defendant no longer posed a danger to the plaintiffs and would be unlikely to violate the Orders of the Court in the future, and said Order was reduced to writing on January 9, 2002.

## STATEMENT ON JURISDICTION

This Court is without jurisdiction pursuant to 28 U.S.C. §1257 because Petitioner's alleged federal claim of an argued "right of association" was never properly presented to the Wisconsin State Courts below. The first time a federal claim was squarely presented was in the Petitioner's Petition for Writ of Certiorari to this Court last month. The jurisdiction of this Court to re-examine the final judgment of a state court can only arise if the record as a whole shows, either expressly or by clear implication, the federal claim was adequately preserved in the state system. New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, 67 (1928); Oxley Stave Co. v. Butler County, 166 U.S. 648, 655 (1897). Because the record in this case does not so show, this Court is without jurisdiction. Moreover, there were independent and adequate state grounds for the Wisconsin courts' decisions regarding this matter thus providing further reasoning for this Court's lack of jurisdiction. Herb v. Pitcairn, 324 U.S. 117, 125 (1945).

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## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

**28 U.S.C. §1257 state courts; certiorari**

(a) Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of

certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under the United States.

**Wisconsin Statutes Sec. 785.03(1)(a)**

§785.03 Procedure. (1) NONSUMMARY PROCEDURE

(a) Remedial sanction. A person aggrieved by a contempt of court may seek imposition of a remedial sanction for the contempt by filing a motion for that purpose in the proceeding to which the contempt is related. The Court, after notice and hearing, may impose a remedial sanction authorized by this chapter.

* * *

**Wisconsin Statutes Sec. 785.04**

785.04 **Sanctions authorized. (1)** REMEDIAL SANCTION. A court may impose one or more of the following remedial sanctions:

(a) Payment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court.

(b) Imprisonment if the contempt of court is of a type included in 785.01(1)(b),(bm),(c) or (d). The imprisonment may extend only so long as the person is committing the contempt of court or 6 months, whichever is the shorter period.

(c) A forfeiture not to exceed $2,000 for each day the contempt of court continues.

(d) An order designed to ensure compliance with a prior order of the court.

(e) A sanction other than the sanctions specified in pars. (A) to (d) if it expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

(2) PUNITIVE SANCTIONS.

(a) *Nonsummary procedure.* A court, after a finding of contempt of court in a nonsummary procedure under s. 785.03(1)(b), may impose for each separate contempt of court a fine of not more than $5,000 or imprisonment in the county jail for not more than one year or both.

(b) *Summary procedure.* A court, after a finding of contempt of court in a summary procedure under s. 785.03(2), may impose for each separate contempt of court a fine of not more than $500 or imprisonment in the county jail for not more than 30 days or both.

**(3)** PAST CONDUCT. A punitive sanction may be imposed for past conduct which was a contempt of court even though similar present conduct is a continuing contempt of court.

**Wisconsin Statutes Sec. 813.125**

**Harassment restraining orders and injunctions. (1)** DEFINITION. In this section, "harassment" means any of the following:

(a) Striking, shoving, kicking or otherwise subjecting another person to physical contact or attempting or threatening to do the same.

(b) Engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.

**(2)** COMMENCEMENT OF ACTION. An action under this section may be commenced by filing a petition described under sub. (5)(a). No action under this section may be commenced by service of summons. Section 813.06 does not apply to an action under this section.

**(3)** TEMPORARY RESTRAINING ORDER. (a) A judge or court commissioner may issue a temporary restraining order ordering the respondent to cease or avoid the harassment of another person, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (5)(a).

2. The judge or court commissioner finds reasonable grounds to believe that the respondent has violated s. 947.013.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (4). A judge or court commissioner shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 7 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

**(4)** INJUNCTION. (a) A judge or court commissioner may grant an injunction ordering the respondent to cease or

avoid the harassment of another person, if all of the following occur:

1. The petitioner has filed a petition alleging the elements set forth under sub. (5)(a).

2. The petitioner serves upon the respondent a copy of a restraining order obtained under sub. (3) and notice of the time for the hearing on the issuance of the injunction under sub. (3)(c). The restraining order or notice of hearing served under this subdivision shall inform the respondent that, if the judge or court commissioner issues an injunction, the judge or court commissioner may also order the respondent not to possess a firearm while the injunction is in effect.

3. After hearing, the judge or court commissioner finds reasonable grounds to believe that the respondent has violated s. 947.013.

(b) The injunction may be entered only against the respondent named in the petition.

(c) An injunction under this subsection is effective according to its terms, but for not more than 2 years.

## STATEMENT OF THE CASE

Just as a federal claim is obtusely presented in the Petition for Writ of Certiorari (the "Petition"), such law and argument was only peripherally presented to the Wisconsin Courts below. Many of the legal arguments in the Petition, including the mention of and inclusion of Wisconsin Statute Section 813.025, were never presented to the courts below nor any clear "federal" argument presented in connection with the state statutes the state circuit court acted under. Far more focus is required on a federal issue to preserve same for a federal appeal than was done here.

This case was resolved on the basis of state law codified in Sections 785.03 and 785.04 of the Wisconsin Statutes. Petitioner also made passing references to contemnor's "constitutional rights." Specifically, Petitioner mentioned an arguable Wisconsin Constitution "right to travel" at pp. 11-12 of her Wisconsin Court of Appeals Brief of Defendant-Appellant. Petitioner also inferred a federal First Amendment "right of (personal) association", arguing an obtuse right to associate with family, at pp. 12-14 in her Wisconsin Court of Appeals Brief of Defendant-Appellant. On this latter point, this vague, inferred federal claim was never presented as a central federal rights argument to the Wisconsin courts; it was a mere passing reference added to the questions surrounding whether the state contempt statute, Chapter 785, had been reasonably applied against Petitioner. Only now, for the first time, on the Petition

for Writ of Certiorari does Petitioner attempt to put a layer of federal "skin" on the brief federal bone or two of comments Petitioner made in the lower, Wisconsin courts proceedings heretofore.

The clear focus at the Wisconsin courts level was on whether the circuit court's purge conditions were a reasonable application of the state's contempt statutes. The Wisconsin courts were never asked to directly address the purported federal "right to associate with family" remarks in the Wisconsin Court of Appeals Brief of Defendant-Appellant. Lacking such a foundation, Petitioner cannot now claim the state courts have substantially and directly reviewed the federal claim, normally a precondition for this Court to review such.

Further, Petitioner comes up with entirely new claims referring to state "courts of equity," "constitutionality of irreparable injury" and "medieval punishment," for the first time on this appeal. Petitioner also cites for her final argument on page 20 of her Petition the creation of a potential precedent with an unpublished Wisconsin Court of Appeals decision that did not even exist at the time the Wisconsin Courts were considering Petitioner's appeals. These new angles or arguments are neither timely nor truly federally based and not adequately raised previously for the Wisconsin Courts to consider. Those claims cannot now be considered for the first time on appeal.

Similarly, Petitioner raises on Page 19 of her Petition an issue of "the practice of accepting trial court conclusions permitting injunctions without considering whether those

conclusions are supported by any finding of act" and supposed "lack of case precedent" as new arguments against the circuit court's sanctions at the trial court level. These are presented well after any reasonable time to present them to an appropriate lower court.

Again, the only issue centrally presented previously to the Wisconsin Courts was whether the parameters of the purge sanctions were reasonable or overbroad, essentially a state law question under the state contempt statutory structure. It should be noted the State court did find the parameters of the purge sanctions to be reasonable and allowable by law. No federal question was ever directly posited for the lower courts to first pass on, a prerequisite for this court to now entertain review. There simply was no federal structure or focus on this case heretofore and therefore no basis now for the Court to grant certiorari to settle a federal issue or matter of substantial importance to the national public.

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## REASONS FOR DENYING THE PETITION

### I. THIS CASE WAS DECIDED UNDER A STATE CONTEMPT STATUTE AND NO FEDERAL CLAIM WAS SUBSTANTIALLY PRESENTED TO THE LOWER STATE COURTS FOR PREVIOUS CONSIDERATION

The questions presented in the Petition were never presented in the record or the decision below. Because there was no central, federal claim presented in the Wisconsin court system, this Court is without jurisdiction under 28 U.S.C. §1257 to decide this case and must therefore deny Petitioner's Petition for Writ of Certiorari.

This Court "has consistently refused to decide federal constitutional issues raised [at this Court] for the first time on review of state court decisions." Cardinale v. Louisiana, 394 U.S. 437, 438 (1969). *See also* Tacon v. Arizona, 410 U.S. 351, 352 (1973); Moore v. Illinois, 408 U.S. 786, 799 (1972); Stanley v. Illinois, 405 U.S. 645, 658 n. 10 (1972); Hill v. California, 401 U.S. 79 (1971). All federal claims must be either addressed by or properly presented to the state court that rendered the decision this Court has been asked to review. Adams v. Robertson, 520 U.S. 83, 86 (1997); *see also* Heath v. Alabama, 474 U.S. 82, 87 (1985); McGoldrick v. Compagnie Genrale Transatlantique, 309 U.S. 430, 434 (1940).

When the highest state court is silent on a federal question before this Court, as the Wisconsin Supreme Court was in its one page denial of the Petitioner's Petition to Review, this Court assumes the federal claim was not properly presented to the highest state court. Board of Directors of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537, 550 (1987). *See also* Street v. New York, 392 U.S. 576, 582 (1969); Fuller v. Oregon, 417 U.S. 40, 50 n. 11 (1974); Bailey v. Anderson, 326 U.S. 203, 206-07 (1945). Petitioner has the burden of defeating this assumption. Board of Directors, supra, 481 U.S. at 550. They

must do so by showing the Wisconsin court had "a fair opportunity to address the federal question that is sought to be presented here." Webb v. Webb, 451 U.S. 493, 501 (1981). Petitioner chose to argue the application of the contempt sanction primarily and now cannot attempt to recast and broaden her lower court claim.

"[R]equiring parties to raise issues below not only avoids unnecessary adjudication in this Court by allowing state courts to resolve issues on state-law grounds, but also assists us in our deliberations by promoting the creation of an adequate factual and legal record." Adams, 520 U.S. at 90, quoting Webb, 451 at 500. In Webb, this Court further discussed important policy considerations underlying this requirement. "These considerations strongly indicate that this Court should apply this general principal with sufficient rigor to make reasonably certain that this Court entertain from state courts only where the record clearly shows that the federal issue has been properly raised below." Webb, 451 U.S. at 499. Federal law based on these policy considerations requires that for this Court to invoke its jurisdiction in this matter, a federal claim must have been raised on the record in the Wisconsin courts. This case is, therefore, improper for review by this Court.

Rule 14.1(g) of the Rules of the Supreme Court of the United States requires, in part, that a Petition for Writ of Certiorari specify the manner and time of raising the federal questions sought to be reviewed to show the federal questions were timely and properly raised to the court of first instance and to the appellate courts. Petitioner's complete failure to comply

with this requirement is tacit acknowledgment a federal question was not adequately raised in the respective Wisconsin Courts. Pursuant to Rule 14.4, the failure on Petitioner's part is sufficient reason alone for this Court to deny this petition.

Petitioner's whole "irreparable injury" discussion also means little since the trial court gave Petitioner an "out" from the sanction if she simply gets mental help and presents that proof to the trial court in the future. In characteristic extreme fashion, Petitioner now makes this appeal to further the disruption, and expense, to the Respondents in having to ,once again, take legal action to defend themselves to further deal with Petitioner's dysfunction. This is not a matter of equity but of reasoned legal protection from a bizarre and troubled litigant.

## II. THE STATE COURT DECISION RESTS ON INDEPENDENT AND ADEQUATE STATE GROUNDS

The decision of the trial court and Wisconsin Court of Appeals rested on Wisconsin statutes, Wisconsin case law and Wisconsin public policy. *See* 260 Wis.2d 323 (Ct. App. 2003). The Wisconsin Court of Appeals, based its decision on independent and adequate state grounds, primarily O'Connor's "past utter disregard for less intrusive order and because of her use of a vehicle as a dangerous weapon" and "protection for (her) victims." All previous attempts (sanctions) including multiple restraining orders have been violated by Petitioner. Predick v. O'Connor, 260 Wis.2d 323, 325-6, 660 N.W.2d 1, (Ct. App. 2003). In effect, the court balanced the contemnor's

right to travel against the victim's right to travel without having to fear seeing the contemnor in their rear view mirror about to side-swipe them again. The Petitioner's main focus was on her right to travel, which she articulated as primarily as a state constitution argument as well as an arguable federal one. That independent state ground was not only the primary ground but an ample one, independent and sufficient, apart from any hypothetically federal analysis that could be attempted.

"This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds." Herb v. Pitcairn, 324 U.S. 117, 125 (1945). This Court's "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights." Id. At 125-126; Ridgway v. Ridgway, 454 U.S. 46, 54 (1981).

This Court's jurisdiction is presumed to exist only if it is not clear the state court relied on independent and adequate state grounds, *and* when it fairly appears the state court rested its decision primarily on federal law. Michigan v. Long, 63 U.S. 1032, 1042 (1983). To the extent the Wisconsin Court of Appeals addressed federal statutory law in its decision, it merely represented an additional basis for a decision that was clearly dispositive on state grounds alone. By no means could the Wisconsin Court of Appeals' decision be categorized as resting primarily on federal law. The decision below was fully and independently supported by a combination of Wisconsin statutory provisions and decisional law and, therefore, this Court is without jurisdiction to consider this matter.

## III. THE DECISION OF THE WISCONSIN COURTS IS IN ACCORD WITH EVERY DECISION OF EVERY COURT TO RULE ON THE ISSUE

The aggravated facts of the many years of Petitioner's serial stalking of the Respondents, repeated use of a dangerous motor vehicle to harass and physically assault them in the Respondents' (not Petitioner's) county to try to run them off the road, and the repeated injunctions that were violated over the years by Petitioner, made this a unique an obvious case for the Wisconsin appellate courts to enforce and uphold the contempt sanctions at issue. Indeed, the Wisconsin Supreme Court affirmed the Wisconsin Court of Appeals well reasoned decision in a one page denial of Petitioner's state Petition for Review. The Wisconsin Court of Appeals also cogently capsulized the dispositive point in this case by the need to protect Respondents from Petitioner with strictly enforced and comprehensive sanctions, citing the representative state case of State v. Lee, 957 P.2d 741(Wash. 1998), that there is no federal "right to interfere with the rights of other persons," which Petitioner has done for years and in an emotionally disruptive and dangerous manner to the innocent Respondents and their families All states have upheld reasonably tailored contempt sanctions to protect innocent citizens from the disruptive and unbalanced perpetrators among our citizenry and the decision in this case was well grounded.

In sum, Petitioner's third argument that this Wisconsin case decision makes bad law is without basis and needs no detailed reply. Petitioner cites no case where someone in

another state had engaged in such a chronic, bizarre and dangerous campaign of harassment to others and a court gave the contemnor more room to maneuver than the trial court below did. And there certainly is no federal interest to the public as a whole in a matter this well decided on state law precedent.

## CONCLUSION

This Court has no jurisdiction over this matter because no federal question was raised before the Wisconsin Courts and because the decision of the Wisconsin Courts rested on independent and adequate state grounds. Even if a federal question had been raised, the decision of the Wisconsin Courts is based on Wisconsin statutes, case law, and public policy, and is consistent with the decision of other state courts to rule on these types of issues.

For all of the foregoing reasons, Respondents, Pamela Predick, George Predick and Tina M. Busch, and their families respectfully request this Honorable Court deny the Petition.

Respectfully submitted,

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